IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4633 of 2004
Date of Decision: 12.3.2007

Jagir Singh ...Appellant

Versus

Hardip Singh and another ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Vivek Singla, Advocate, for the appellant.

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for permanent injunction restraining the defendants from interfering in any manner in the peaceful cultivating possession of the plaintiffs over the land in dispute, was dismissed.

It has been found that in fact, on the said land there was a water course No. 19995R. The said water course was demolished by the plaintiff and it was ordered to be restored by the Executing Engineer, as an authority under the Northern India Canal and Drainage Act, 1873 (for short `the Act'). Even appeal against the said order was filed by the plaintiff, which was dismissed on 29.7.1997, Exhibit D.3. Thus, it was found that the remedy of the plaintiff is under the Act and the jurisdiction of the Civil Court, in terms of Section 30(G) of the Act, is barred.

The sole argument raised by the learned counsel for the appellant is that the water course, subject matter of the proceedings under the Act is different than the land in dispute. However, it has been

found by the Courts below from the statement of Hemat Singh DW1 that the dispute is in respect of water course, which was subject matter of the proceedings under the Act. The said finding is based upon the proper appreciation of evidence.

It cannot be said that such finding suffers from any patent illegality or irregularity, which may give rise to any substantial question of law in the present second appeal.

Hence, the present appeal is dismissed.

12-03-2007 (HEMANT GUPTA)
ds JUDGE

Date of Decision: 12.3.2007